THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.18555 OF 2006

DATED: 19-06-2007

Between :

1. Abbas Ali Syed now known as Abbas Ali Mirza,
   Minor, rep. By his natural guardian and mother and
   Father i.e., the petitioners 2 and 3 herein.
2. Smt. Bhar Fatima Mirza
3. Mohd Ali Hyder Mirza … Petitioners

And

The Regional Passport Officer, Passport Office,
Secunderabad. … Respondent

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ORDER :

The 1st petitioner is the son of the 2nd petitioner herein born out of wedlock with one Mr. Syed Akbar Ali. However, the said marriage was dissolved on 28-5-2003 and to that effect a Certificate was issued by the A.P. State Wakf Board and subsequently the 2nd petitioner has entered into second marriage with the 3rd petitioner herein, who is a British Citizen. It is stated that the marriage of the 2nd petitioner with the 3rd petitioner was performed on 21-12-2005 as per the Muslim rites and customs at Hyderabad vide Marriage Certificate issued by the A.P. State Wakf Board, Hyderabad.

The 2nd petitioner who has deposed to the affidavit filed in support of this writ petition on behalf of all the petitioners stated that after she married to the 3rd petitioner, the 3rd petitioner has become the legal custodian and guardian of the 1st petitioner minor child jointly along with the natural mother – 2nd petitioner.

It is not in dispute that the 1st petitioner was initially holding a passport dated 28-9-2001 valid upto 27-9-2006 in which the name of his biological father was shown in the column "Name of the father".

The petitioners claimed that by virtue of his marriage to the 2nd petitioner on 21-12-2005, the 3rd petitioner has become the legal custodian and guardian of the 1st petitioner minor child, who is now known as Abbas Ali Mirza. It is stated that since the entire family

wanted to migrate to United Kingdom, they approached the respondent - Passport Officer for issuance of a passport by affecting the change of the name of the 1st petitioner as Abbas Ali Mirza and also to enter the name of the 3rd petitioner as father. The said request was rejected on the ground that there is no provision under the Passports Act, 1967 to correct the entries in the passport. Aggrieved by the said action of the respondents, this writ petition has been filed.

A counter-affidavit has been filed by the respondent stating that the name of the biological father of the 1st petitioner has to be endorsed on the passport unless the child is legally adopted .

I have heard the learned Counsel for both the parties.

Whereas the learned Counsel for the petitioner contended that as per the Islamic law the 3rd petitioner after his marriage to the 2nd petitioner is entitled to be declared as guardian and legal custodian of the minor child (1st petitioner), the learned Counsel appearing for the respondent vehemently contended that the incorporation of the 3rd petitioner's name in the passport as the father of the 1st petitioner would amount to declaring the 3rd petitioner as guardian and legal custodian which is impermissible under law.

It is to be noted that though there is no provision under the Passports Act, 1967 providing for correction of entries in the passport, the Government of India issued instructions/clarifications vide Circular dated 18-04-2001 which run as under :

(a) Where an applicant is seeking rectification/Correction of a mistake in the entry of date of birth/place of birth in the passport, PIA (Passport Issuing Authority) may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment, PIA may effect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the General clauses Act, 1997, a competent authority issuing a certificate could also make necessary amendments to the same.

(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority and the

> applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth."

The above instructions are binding on the respondent and any request for correction of the entries in the passport has to be considered in terms of the Circular dated 18-04-2001.

In the circumstances, the request of the petitioners for issuance of a passport to the 1st petitioner by altering the name of the 1st petitioner as well as the name of the father cannot be rejected at the threshold, but requires to be considered following the instructions under the Circular dated 18-04-2001.

The learned Counsel for the petitioners contends that as per the Islamic law no declaration by any Court of law is necessary and that the 3rd petitioner upon his marriage to the 2nd petitioner is entitled to act as custodian and legal guardian of the 1st petitioner. Thus, according to the learned Counsel, the corrections sought to be made fall under Clause (a) of the Circular dated 18-04-2001 which do not need a declaratory order.

If that be so, it is for the petitioners to place the relevant material before the respondent to substantiate their plea in which event the respondent shall consider the same and pass appropriate orders in the light of the Circular dated 18-04-2001.

Having regard to the facts and circumstances of the case, the Writ Petition is disposed of granting liberty to the petitioners to resubmit the application with all the relevant supporting material to the satisfaction of the respondent to show that the 3rd petitioner is entitled to act as legal guardian and custodian of the 1st petitioner without any declaration from the Court of law. If any such application is made, the respondent shall consider the same in terms of the Circular dated 18-04-2001 and pass appropriate orders in accordance with law within a

period of four weeks from the date of receipt of such application. No costs.

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G. ROHINI, J.

Dt. 19–06-2007
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